

1 STATE OF CALIFORNIA
2 CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
3 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
4 LOS ANGELES REGION
5
6 REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS
7 ITEM 11 ONLY
8 SUNSHINE CANYON LANDFILL
9 469th REGULAR BOARD MEETING
10 Thursday, December 4, 2003
11 9:12 A.M.
12
13 The City of Simi Valley
14 Council Chambers
2929 Tapo Canyon Road
Simi Valley, California
15
16 BOARD MEMBERS PRESENT:
17 SUSAN M. CLOKE, Chair
18 FRANCINE DIAMOND, Vice-Chair
19 JULIE C. BUCKNER-LEVY
20 H. DAVID NAHAI
21 CHRISTOPHER C. PAK
22 TIMOTHY J. SHAHEEN
23
24 Reported by: NEALY KENDRICK, CSR 11265
25 Job No.: 03-25824

1

TRANSCRIBED PORTIONS OF MEETING AGENDA

PAGE

2

WASTE DISCHARGE REQUIREMENTS

8. Consideration of NPDES requirements - Renewal

3 (After a public hearing, the Board will

be asked to adopt or rescind the permits

4 for the following facilities.)

Renewal

5 8.5 Ventura County Waterworks District

No. 1 (Moorpark Wastewater Treatment

6 Plant) Moorpark 96

Heard with Items 12.1 and 12.2 (see below)

7

LANDFILL

8 11. Consideration of tentative Revised

Non-NPDES Requirements for Sunshine Canyon

9 City Landfill (File No. 58-076). [The

hearing on this matter was commenced

10 during the Regional Board's July 24, 2003,

special Board meeting, continued for

11 additional sessions held during the

September 11, 2003, and November 6, 2003,

12 regular Board meetings, and subsequently

continued to this meeting for further

13 proceedings. The public hearing portion

of this matter was concluded and closed at

14 the end of the November 6, 2003, meeting.

The Board will commence its deliberation

15 at this meeting, which could include

clarifying questions, but will not include

16 any additional public testimony. At the

conclusion of its deliberations, the Board

17 may take action on the proposed waste

discharge requirements.] 8

18

QUESTIONS AND DISCUSSION

19

BUCKNER-

CLOKE LEVY NAHAI DIAMOND PAK

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1 SIMI VALLEY, CALIFORNIA; THURSDAY, DECEMBER 4, 2003

2 9:12 A.M. STARTING TIME

3 9:30 A.M. -- TRANSCRIPTION OF PROCEEDINGS BEGINS

4

5 CHAIR CLOKE: Okay. We are now going to take
6 up the matter of the Sunshine Canyon application.
7 And before we actually begin, I'd like to ask
8 Mr. Lauffer to come to the podium 'cause I have some
9 questions for him.

10 (Off-the-record discussion between

11 Mr. Lauffer and Ms. Cloke)

12 CHAIR CLOKE: Okay. Thank you, Mr. Lauffer.

13 This is the time and place for the
14 Regional Board Members to deliberate before taking
15 action on the matter of new Waste Discharge
16 Requirements for the proposed landfill expansion,
17 Phase 1 of City Landfill Unit 2 at the Sunshine
18 Canyon Landfill.

19 The public hearing portion of this
20 matter was commenced during a special Board meeting
21 on July 24, 2003. It was continued at both -- and
22 for both hearings held during our September 11 and
23 our November 6 regular meetings. And at the
24 conclusion of the November 6th session, we concluded
25 and closed the public hearing portion of the

1 testimony.

2 And the matter is before the Board
3 today for deliberation and for action. During
4 deliberation, Board Members may ask clarifying
5 questions of staff, the applicant, and/or others who
6 gave testimony. All persons who present -- I'm
7 having trouble seeing people in the audience.

8 Are the Sunshine Canyon applicants
9 here? I don't see you. There you are. Okay. I
10 didn't see you this morning. I'm sorry.

11 Is the North Valley Coalition here?
12 You are present? And I know our staff is here.
13 Okay. All of you have been here and have taken the
14 oath previously? Is there anyone who hasn't taken
15 the oath? Okay.

16 So those persons who have previously
17 testified and are asked questions today, I want to
18 remind you that this is a continuation of our
19 previous hearing and that you remain under oath to
20 tell the truth, upon penalty of perjury, in any
21 answer that you give the Board today.

22 If there's any person that a Board
23 Member asks a question of, who did not take the oath
24 at a previous occasion, please let me know and I will
25 administer it today. Thank you very much.

1 I would like now to ask the Board
2 Members, starting with Ms. Buckner, if you could,
3 please let me know who you would like to question.
4 MS. BUCKNER-LEVY: I have -- and I do see some
5 of the folks here -- I have a question for
6 Councilmember Smith, Mr. Williams of the mayor's
7 office. And is there anybody here representing the
8 city attorney for the City of Los Angeles? Okay.
9 Gideon? Thank you.
10 CHAIR CLOKE: Mr. Nahai?
11 MR. NAHAI: I would like to pose questions to
12 the same people as well as our staff.
13 CHAIR CLOKE: Ms. Diamond?
14 VICE-CHAIR DIAMOND: Well, the same people
15 unless those questions are asked by other Board
16 Members.
17 CHAIR CLOKE: Thank you.
18 Mr. Shaheen?
19 MR. SHAHEEN: No one additional right now.
20 CHAIR CLOKE: Mr. Pak?
21 MR. PAK: I'll hear what the other questions
22 are before I ask mine.
23 CHAIR CLOKE: Okay. Now, before we begin
24 asking questions, I have a speaker request card from
25 Mr. Wayde Hunter of the North Valley Coalition.

1 And, Mr. Lauffer, do you want to
2 comment on this speaker request card, please?

3 MR. LAUFFER: Certainly, Madam Chair.

4 What you have before you today, as a
5 board, is a complete administrative record comprised
6 of several Board meetings over the course of several
7 months. At the conclusion of November Board meeting,
8 the Chair had closed the public proceedings and the
9 public hearing portion.

10 And that is certainly within this
11 Board's discretion, in terms of the procedures under
12 which it operates under the Bagley-Keene Open Meeting
13 Act and under the Porter-Cologne Water Quality
14 Control Act. So the Board is free to proceed in a
15 manner of relying only on that record and drawing
16 upon questions that Board Members may have
17 outstanding with respect to that record.

18 Mr. Hunter, representing North Valley
19 Coalition, has requested permission to file, with the
20 Board, a petition -- basically it's a petition in
21 opposition to the landfill expansion; and it's
22 comprised of approximately 770 signatures, I
23 believe --

24 MR. HUNTER: Actually, 790 signatures that
25 I've counted.

1 MR. LAUFFER: 790 signatures. The Board's
2 notices with respect to this proceeding have been
3 very clear that the record is closed. You know, it's
4 always a slippery slope when you begin opening it up
5 to receive materials.

6 And my recommendation would be that
7 the Board not accept, as part of the
8 administration -- or the administrative record for
9 this proceeding, the actual petition and signatures.

10 However, Mr. Hunter is free to go
11 ahead and submit it to the executive officer. It
12 will be included in a separate file.

13 And that does several things for the
14 Board. This may be grounds, in terms of their -- if
15 North Valley Coalition chooses to proceed with a
16 petition to the State Water Resources Control
17 Board -- that may be an objection that they raise.

18 And if they do so, we will at least
19 have the material so we can provide it ex-agenda to
20 the State Water Resources Control Board. But my
21 recommendation is that it not be included within the
22 administrative record at this proceeding.

23 CHAIR CLOKE: And I would also like you to add
24 to that the discussion that we had about, you know,
25 why -- why we do this in terms of being fair to all

1 the parties and not clouding the record and so on.

2 MR. LAUFFER: Certainly.

3 CHAIR CLOKE: Explain it so that people really
4 understand what this -- what the reasoning is.

5 MR. LAUFFER: The fundamental essence of this
6 Board's rules with respect to admitting testimony
7 late and accepting testimony and written submissions
8 by a date certain is to ensure a procedural fairness
9 in the process.

10 That fairness extends not only to the
11 project applicant -- in this case, BFI -- but to the
12 Regional Board staff; the Regional Board members;
13 and, in many instances, it actually protects entities
14 like the North Valley Coalition from last-minute
15 submittals from project applicants and so on.

16 So it's essentially a reflection of
17 the due process element by which this Board must
18 proceed in all quasi-adjudicative -- in other words,
19 permitting -- decisions and any decisions in which we
20 determine the rights of a particular applicant.

21 Obviously, the North Valley Coalition
22 also has a due process interest. They benefit from
23 these same procedural rules. And we have to apply
24 them with an even hand. And that's what the Board
25 procedures are designed to do. There are obviously,

1 consistent with due process, exceptions to that when
2 the information would not have been available before.

3 I think it's very clear to this Board
4 the strong opposition that North Valley Coalition
5 brings with it to the landfill expansion. So there's
6 certainly no prejudice to North Valley -- the North
7 Valley Coalition in not including the 790 signatures
8 within the administrative record.

9 CHAIR CLOKE: Thank you, Mr. Lauffer. Okay.

10 Then, unless a Board Member objects,
11 without objection, I'm going to rule that the public
12 hearing remain closed, that Mr. Hunter may give staff
13 his petition for inclusion ex-agenda into the file
14 but that it not be part of the public record.

15 MR. HUNTER: Thank you.

16 CHAIR CLOKE: Thank you, Mr. Hunter.

17 Okay. I would also like to welcome
18 Councilmember Smith and ask him if he would be
19 willing to come to the podium.

20 Good morning, Councilmember Smith.

21 COUNCILMEMBER SMITH: Good morning. Thank you
22 for inviting me back.

23 CHAIR CLOKE: Miss Buckner, would you like to
24 start?

25 MS. BUCKNER-LEVY: I'm going to actually defer

1 my questions -- let David begin -- because I suspect
2 we'll have similar questions and we might as well
3 just shorten this for everybody, including the
4 councilmember.

5 MR. NAHAI: Thank you for being with us.

6 COUNCILMEMBER SMITH: My pleasure.

7 MR. NAHAI: I was intrigued by your testimony
8 and your presentation the last time, which was both
9 illuminating and entertaining -- the stuff coming out
10 of the boxes and so on.

11 MS. BUCKNER-LEVY: And I wondered why Mitchell
12 perhaps hadn't neglected to show up --

13 COUNCILMEMBER SMITH: He's not as cute.

14 MS. BUCKNER-LEVY: No. Certainly not.

15 MR. NAHAI: There may be other --

16 CHAIR CLOKE: I'm going to start banging my
17 gavel any second. So let's get back to --

18 COUNCILMEMBER SMITH: That's good -- good
19 drama.

20 MR. NAHAI: But on a more serious note, you
21 indicated in your testimony the last time, as did Mr.
22 Kracov of the city attorney's office, that the City
23 may be taking certain steps in reviewing the permits
24 that have been issued to Sunshine Canyon. There was
25 talk of the possibility of revocation hearings and

1 further investigations of Sunshine Canyon's
2 compliance records and so on.

3 Can you bring us up to date on what,
4 if any, concrete steps have been taken since the last
5 time that you appeared before us. And rather than
6 just talk about intentions, you might just -- I'm
7 interested in hearing what exactly, if anything, has
8 occurred along the lines of the testimony that you
9 presented.

10 COUNCILMEMBER SMITH: Thank you. First of
11 all, I introduced a motion in the city council to
12 conduct a hearing into the zoning issue dealing with
13 the water-collection system at Sunshine Canyon.

14 The city attorney is now reviewing
15 that issue along with some issues dealing with the
16 1956 covenants that go along with the property at
17 Sunshine Canyon, particularly what we call the
18 "O'Melveny covenants." The city attorney's
19 researching that matter now. And the first portion
20 of the agenda will be heard in my committee next, in
21 public works -- the clarifier and operations there.

22 So we are moving forward. And it will
23 be before the "plum" committee of the city council
24 within the next month. And the city attorney
25 hopefully will have the report ready for them at that

1 time. But we are in the process. The motions have
2 been introduced to look at those issues legally from
3 a council point of view.

4 CHAIR CLOKE: On that one issue, what would
5 you hope the outcome would be?

6 COUNCILMEMBER SMITH: My hope would be is
7 that, first of all, that we realize that the
8 clarifier operation, currently what is called a
9 "buffer zone," is illegally operating; that Sunshine
10 Canyon does not have the right to use that clarifier
11 facility to take the water from Sunshine Canyon;
12 purify it at least to their -- what we believe is the
13 standards that are currently in place; and put it in
14 the city sewer system.

15 We are now testing, as I brought to
16 your attention last time, for numerous constituencies
17 in that water that the City's never tested before to
18 find out what is actually going from Sunshine Canyon
19 and then what is going from that clarifier into the
20 City sewer system.

21 And obviously you've been very
22 involved with that. And our sewer system is a big
23 concern for us. So I have our Sanitation Department
24 looking at all the constituencies that are going
25 through the clarifier into the city sewer system.

1 And also we're looking at what's going
2 into the clarifier before it's cleaned up to find out
3 what's coming out of that landfill right now. The
4 City has never tested for those things before such as
5 e-waste. 1,4-dioxin has never been tested.

6 We want to see what's coming out of
7 that, in the leachate and seepage, so we can
8 determine, one, if there really is a rip in the liner
9 as we have claimed and, two, what is coming out of
10 that landfill that is a concern for water-quality
11 purposes in the City of L.A.

12 CHAIR CLOKE: Thank you, sir.

13 Other questions for the council
14 member?

15 VICE-CHAIR DIAMOND: I had one -- I'm sorry.

16 MR. NAHAI: I was just -- how long would you
17 anticipate that this process of the investigation
18 would take?

19 COUNCILMEMBER SMITH: On the zoning issue,
20 like I said, we start that with my committee next
21 week. It's going to the "plum" committee probably in
22 January. We hope to have that clarified in January
23 sometime.

24 As far as the water-quality issues go,
25 we've just started to get numbers back -- a lot of

1 numbers. They haven't been analyzed. We have three
2 different contractors working on this. We should
3 have all those reports by the 1st of the year and
4 some analysis early in January, I hope.

5 VICE-CHAIR DIAMOND: Just to follow up on the
6 issue of the concern about contamination, obviously
7 our role is concern with water quality and public
8 health. The last time you were here, you talked
9 about the technical advisory committee looking into
10 the testing of pre -- I think it was pretreated
11 seepage and wastewater leachate sump water.

12 And so are you -- are you -- are your
13 thoughts that the testing might result in your
14 learning that, in fact, there are some public health
15 issues related to the water quality and the
16 contaminants concerned that you're testing for?

17 COUNCILMEMBER SMITH: Yes. First of all,
18 we're testing -- we've been testing for years at the
19 post-treated side of the water. And I've been
20 looking at big spikes in certain constituencies of
21 that water. They have not exceeded, yet, any
22 standards. But they're moving in that direction. So
23 that's concern Number 1.

24 Number 2, we're, for the first time,
25 testing for things that are really of great concern

1 now, things that have been outlawed in recent years
2 by EPA and the Water Quality Board and others that
3 have never been tested before. And I thought it was
4 time we start testing for that. And so we are doing
5 that.

6 Our technical advisory committee has
7 mandated BFI to pay for the testing, which they're
8 entitled to do. We had asked for them to expedite it
9 so we'd have this information now.

10 BFI refused to pay for the expediting.
11 So it's going slower than we wanted.

12 But we will have some real numbers in
13 January on these issues that have become really
14 relevant in recent years and things that have never
15 been tested for such as e-waste components, certain
16 kinds of electronic -- cathode -- you know, cathode
17 tube -- things that are being -- that are be --
18 coming into the landfills now that are starting to
19 show up in the City's water and leachate.

20 Those are of great concern to all of
21 us, I think, and certainly to you. And it's never
22 been tested for before. So we'll have those numbers
23 for you in January.

24 VICE-CHAIR DIAMOND: Can we have assurance --
25 can we have some assurance from you that those

1 numbers would be available --

2 COUNCILMEMBER SMITH: Yes.

3 VICE-CHAIR DIAMOND: -- in January?

4 COUNCILMEMBER SMITH: Absolutely. That is our
5 intention.

6 VICE-CHAIR DIAMOND: Thank you.

7 CHAIR CLOKE: Thank you, Councilmember.

8 COUNCILMEMBER SMITH: Thank you very much.

9 MR. PAK: Miss Cloke.

10 CHAIR CLOKE: Do you have a question?

11 MR. PAK: Not so much a question for the
12 councilmember. But I guess it relates to this whole
13 process that the City is going through.

14 And I guess the question to
15 Mr. Lauffer -- where does that put us in this
16 process?

17 CHAIR CLOKE: Well, could we -- could we hold
18 the staff questions until you hear from the city
19 attorney who is here? And maybe he should, you
20 know -- yeah.

21 MR. PAK: That would be great. Thank you.

22 CHAIR CLOKE: But we will -- we won't forget
23 you.

24 Thanks, Councilmember.

25 Mr. Williams. Mr. Williams from the

1 mayor's office.

2 MR. WILLIAMS: Good morning.

3 CHAIR CLOKE: Good morning. How are you?

4 MR. WILLIAMS: Good.

5 MS. BUCKNER-LEVY: I have a brief but -- a

6 quick question for you. And based upon what we've

7 heard from the councilmember, what actions, steps, if

8 any, from the Mayor, City of Los Angeles -- I assume

9 he's supporting the councilmember's efforts.

10 But are there any additional actions,

11 steps being taken by your office in this regard?

12 MR. WILLIAMS: Absolutely. We're continuing

13 to work with not only Councilmember Smith but with

14 other councilpeople who are interested in this whole

15 issue. And there are a quite a few.

16 We continue to work with the city

17 attorney. I won't go over all the other procedures

18 we've gone through before with our landfill oversight

19 committee. But that's a huge part of what we're

20 doing as well. In fact, just yesterday, I believe

21 the city attorney submitted, to our EQ committee, our

22 new recycling ordinance which we are very much in

23 support of.

24 And we continue to work with some of

25 the other transporters of waste within our community

1 to find other places to take our waste, other means
2 in which to dispose of our waste.

3 We are continuing to work with our
4 multifamily task force that we have to continue to
5 increase the amount of recycling that occurs within
6 the multifamily units within our community as well as
7 the airport and convention center, other large
8 businesses.

9 We see this as a multipronged
10 approach, in addition to closing the landfills in our
11 community. We know it's absolutely imperative that
12 we increase the amount of recycling, increase the
13 amount of diversion that we do. And we're sort of
14 shooting our efforts on that.

15 MR. NAHAI: But in connection with Sunshine
16 Canyon, specifically, other than the mayor's
17 announcement that waste will no longer be hauled by
18 the City to this landfill -- I think in 2005,
19 onwards -- and other than the mayor's stated
20 opposition to the expansion, has the mayor's office
21 taken any other steps to assist with, you know, the
22 various hearings and steps that Councilmember Smith
23 was just talking about or --

24 MR. WILLIAMS: Again, we're working closely
25 with the councilmembers, both with Mr. Smith,

1 Mr. "Cardenas" (phonetic), Mr. Villaraigosa, other
2 council people who are affected by this, who have a
3 great interest in this.

4 We've also taken concrete steps --
5 some of which we've done in closed session in
6 committee with the Board of Public Works that we
7 can't speak of openly -- working with various people
8 in industry, some waste haulers as well, to help us
9 in our efforts not to have to use Sunshine Canyon.

10 There were concrete steps taken this
11 week. We expect more concrete steps to be taken
12 during the first week of January as well to ensure
13 that we don't have to use Sunshine Canyon.

14 CHAIR CLOKE: Thank you.

15 Any other questions for Mr. Williams?

16 MR. PAK: Yes. I have a question.

17 When you say "concrete steps," do you
18 have some time schedule as to when -- have you
19 identified locations or places specifically where we
20 can haul some of the trash from the city to?

21 What time frame are we looking at?
22 The -- 2005 is when we don't want to use Sunshine
23 Canyon, but when can we actually have specific
24 places?

25 MR. WILLIAMS: There are a number of variables

1 that go into this. We are thinking -- some of this
2 information, I can't really disclose because it was
3 done in closed session and involves some legal
4 maneuvering that we're doing.

5 But we have been in discussions with
6 several companies in an effort to locate various
7 transfer stations throughout the city, in an effort
8 to go forward with the long-term plans to rail-hall,
9 some long-hall -- all those things are being done
10 now.

11 In terms of the time frame, we took
12 some steps this week. There are going to be
13 additional steps that are taken in January. We're in
14 negotiations now with the -- at least one company for
15 a transfer station and for some long-haul. Those
16 negotiations have been taking place for a while. I'm
17 not sure how much longer they're going to take.

18 But we maintain our time frame to be
19 out of Sunshine Canyon at the conclusion of our
20 current contract.

21 MR. PAK: And those transfer stations are in
22 the city limits? Or are they outside of the City of
23 L.A.?

24 MR. WILLIAMS: The one that we're dealing with
25 now is -- that we're in actual negotiations with now

1 is within the city limits. It's our long-term plan
2 to have waste sheds throughout the city so that every
3 sector of the city has a waste-transfer station.

4 That's not an easy thing to do. But
5 it's one that we're moving forward on throughout the
6 city. So we'll move forward to attempt to purchase
7 those sites and to have a collaborative effort with
8 other cities as well for waste-transfer stations
9 where they're along the border of our city.

10 So all those efforts are going forward
11 now. The exact time on it, I can't tell you. But,
12 again, it is the mayor's contention and his absolute
13 thrust to be out of Sunshine Canyon at the end of our
14 current contract.

15 MR. PAK: Thank you.

16 CHAIR CLOKE: Any other questions for
17 Mr. Williams?

18 Thank you for coming, Mr. Williams.

19 MR. WILLIAMS: Thank you very much.

20 CHAIR CLOKE: Mr. Kracov.

21 Good morning. Thank you for coming.

22 MR. KRACOV: Good morning. Gideon Kracov with
23 the L.A. city attorney's office.

24 MR. NAHAI: Good morning, Mr. Kracov. It is
25 basically the same question we posed to you as a

1 representative of the city attorney's office.

2 MR. KRACOV: I'll probably ask you to restate
3 the question but -- and a lot of these issues were
4 covered last time as well. With some trepidation, I
5 read the transcript from last -- to see what I said
6 but really --

7 MR. NAHAI: That's always a good idea.

8 MR. KRACOV: -- but really the things I have
9 to tell you today are very much what I told you last
10 time.

11 CHAIR CLOKE: And we're not asking for more
12 testimony. We're asking for a direct answer to
13 Mr. Nahai's question which is "What is the City doing
14 that would impact this Board's decision?" We don't
15 want a repetition of what we heard last time.

16 MR. KRACOV: Well, thank you, Madam Chair.

17 Let me be clear with regard to this
18 question about revocation that Board Member
19 Buckner-Levy asked when I spoke to you last time.
20 Right now, what we're investigating is not -- and
21 council has not initiated or asked for revocation
22 inquiry for the general plan amendment or the zone
23 change for the landfill expansion. We are not
24 investigating that at this time.

25 What we are investigating is this

1 issue with the sewer lines within this buffer zone
2 that was discussed south of the landfill. There is a
3 variance from back in the 1970's that relates to that
4 sewer line.

5 That is the subject of the motion that
6 Councilman Smith introduced. We're working to
7 investigate the legal entitlement for that sewer
8 line.

9 As I said last time, if there are
10 certain findings and evidence that comes to play,
11 that revocation would be one of the things on the
12 table for that sewer line. But we're not looking at
13 the landfill expansion or the zone change at this
14 time. So I hope that that clarifies a little bit on
15 revocation.

16 However, last time we also talked
17 about the other things that we are doing. And we are
18 working with the mayor and the council office --

19 CHAIR CLOKE: We were at the last meeting.
20 And we read the transcript. So just answer the
21 question.

22 MS. BUCKNER-LEVY: I have just a quick
23 follow-up. And Chris got to this with his questions
24 to Mr. Williams, which is time frame in which you're
25 operating and you're investigating. And when do you

1 expect to have a report back or any other kind of
2 ruling from the city attorney's office?

3 MR. KRACOV: With regard, Board Member
4 Buckner-Levy, to this issue of the variance for the
5 sewer?

6 MS. BUCKNER-LEVY: Uh-huh.

7 MR. KRACOV: As Councilman Smith indicated, I
8 think we're going to have some better answers later
9 this month. And probably in January, we'll be able
10 to get to the bottom of it.

11 CHAIR CLOKE: I think Mr. Pak had a question.

12 MR. PAK: What I'm hearing is that you're not
13 investigating the possibility of a revocation on the
14 land use itself, on the use of the areas that are
15 landfill?

16 MR. KRACOV: That is correct. We have not
17 been asked to initiate some kind of revocation
18 inquiry. We have looked at it and examined it. But
19 it is not something that the city attorney has been
20 asked to do or that the council has initiated at this
21 time.

22 MR. PAK: So what you are investigating now is
23 whether this variance that was granted back in the
24 70's for putting a sewer line -- what kind of
25 variance would be required to put in a sewer line?

1 MR. KRACOV: Well, that --

2 MR. PAK: Is that a variance on the land use?

3 Or is that a variance that they have applied to

4 public works?

5 MR. KRACOV: It's a complicated issue. It was

6 a variance issued to a former lessee of the property

7 concerning the landfill gas-collection system.

8 That's what it was used for. Now that's being used,

9 we believe, by the landfill operator not for landfill

10 gas collection. That operation is discontinued.

11 Instead, it is used at the location

12 where all the sewer discharges from the County, City,

13 and the future expansion are going to go through you.

14 So the operations have changed a little bit. Of

15 course, over the many years, the flow and the

16 capacity and the constituents through that sewer line

17 have changed. That's what we're investigating.

18 MR. PAK: So that variance was granted through

19 the Planning Department? Or was that a Bureau of

20 Sanitation --

21 MR. KRACOV: Planning Department.

22 MR. PAK: Planning Department. And then that

23 variance must have been conditioned on what they had

24 to do to -- or how they could use -- utilize that

25 variance.

1 MR. KRACOV: That is correct.

2 MR. PAK: The conditions specifically limit
3 what they can use that particular pipeline for.

4 MR. KRACOV: That's one of the things we're
5 investigating.

6 MR. PAK: How long will that take to
7 investigate? That condition in that variance should
8 be readily available and pretty clear as to what it
9 states; right?

10 MR. KRACOV: Yes. Yes. Board Member, that is
11 true. We -- but we -- as I indicated, there has been
12 a change in the nature and kind of those operations.

13 So what we're investigating, from a
14 legal perspective, is whether that change in nature
15 and kind from a landfill-gas collection to a very
16 large landfill sewer-discharge location is
17 inconsistent with those original conditions, whether
18 new conditions have to be added, and what kind of
19 things we would do --

20 MR. PAK: You know what the conditions are.
21 You're just trying to figure out if the operations
22 have been adhering to those conditions right now --

23 MR. KRACOV: Or whether new conditions should
24 be added or other findings that may be appropriate,
25 depending on the evidence.

1 CHAIR CLOKE: Miss Diamond?

2 VICE-CHAIR DIAMOND: As to the issue of the
3 liner, which we've talked about, has the city
4 attorney's office taken any position on the issue of
5 a double-liner or any position on the nature of the
6 liner that this -- that this should have?

7 CHAIR CLOKE: Well, he wouldn't know. The
8 City --

9 VICE-CHAIR DIAMOND: The City --

10 MR. KRACOV: You know, the city attorney is,
11 you know, on issues like the liner, is very sensitive
12 to the most -- utmost protection possible. The city
13 attorney has indicated his public opposition to the
14 Sunshine Canyon expansion as his personal feeling on
15 the issue.

16 As to the specific question, I don't
17 think we've taken a specific position on that. In
18 prior testimony, we have indicated there are certain
19 things in terms of mitigation that we think are
20 necessary with the landfill groundwater-extraction
21 trench and other things.

22 But we have not, in answer to your
23 question, taken a specific position on the
24 double-liner system. We leave that to some folks
25 that have a bit more expertise than us.

1 CHAIR CLOKE: Any other questions for
2 Mr. Kracov? No?
3 Thank you very much.
4 MR. KRACOV: Thank you.
5 CHAIR CLOKE: Okay. Ms. Rasmussen, I think
6 this is you. You are our lead staff person on this
7 one.
8 MS. RASMUSSEN: Good morning. Paula
9 Rasmussen. Yes, I am the lead. But I will rely upon
10 the expertise of staff -- Ron Nelson and Wen Yang --
11 as necessary.
12 CHAIR CLOKE: Okay. Great.
13 Ms. Buckner, any questions?
14 MS. BUCKNER-LEVY: I have no questions.
15 MR. NAHAI: I do.
16 Miss Rasmussen, at the last hearing,
17 we heard testimony that the liner is susceptible to
18 stress cracks from all kinds of household products --
19 you know, margarine, vinegar, vanilla, toiletries, et
20 cetera -- and the urging was that what the staff
21 proposal recommends, as far as the thickness of the
22 liner is concerned, that that is inadequate and that
23 it's incumbent upon us, given the possible weaknesses
24 in the land -- in the liner and how easily it might
25 be permeated, that we should opt for additional

1 thickness.

2 Can you comment upon that, please.

3 MS. RASMUSSEN: Yeah. Staff looked into this.

4 And, you know, our opinion is that the liner itself
5 would actually not be impacted by those
6 concentrations because what we've seen in the
7 leachate are very low concentrations of these
8 substances.

9 And the liner, in fact, is protected
10 by the layers above it before you hit the -- the
11 plastic liner itself. So you would see two feet of
12 soil on top of it. You would see geonets and gravel
13 layer above that.

14 So what would actually hit the liner
15 itself would be low concentrations. You're not going
16 to see it in the hundred percent of the margarine or
17 whatever.

18 MR. NAHAI: But -- I mean, but that requires a
19 little bit of speculation, doesn't it, that, if the
20 soil acts as we hope it will and if the upper layers
21 act as we hope they will, that the concentrations
22 that will reach the liner will not be in
23 sufficient -- sufficient volumes to -- as to go
24 through it?

25 But if they -- if those -- if those

1 substances actually did reach the liner, in
2 sufficient concentrations, that they would crack it,
3 that they would -- that it would not be impervious to
4 that?

5 MS. RASMUSSEN: I'm going to actually ask Wen
6 Yang to help me address that. But, in general, what
7 we have seen is that the leachate does not have
8 those concentrations. You know, we have data that
9 shows what is in leachate. So, so far, we haven't
10 come into those concentrations.

11 MR. PAK: Also maybe you can add to that
12 answer the construction of how you do those barriers.
13 Now, my understanding is that you have a certain
14 layer of soil. Now, is that clay? Or is that dirt?
15 What type of soil is on top of that? 'Cause there
16 are several layers of barriers; right?

17 DR. YANG: There's protective --

18 MR. PAK: What is the construction of that?

19 DR. YANG: There is a protective soil. It's
20 just regular -- they're not clay because they're
21 there to try to protect the plastic liner. So what
22 they do is, after they complete the liner system,
23 when everything's finished, they will put a layer of
24 protective soil. And they use at least two feet
25 thick. And above that is where they will put the

1 trash.

2 MR. PAK: Do they compact the soil when they
3 put this dirt on top? Or is this --

4 DR. YANG: Yes. Yes.

5 MR. PAK: -- just a --

6 DR. YANG: It's compacted.

7 MR. PAK: And does this membrane -- is this an
8 approved membrane by the State as well as -- and I
9 know that -- I'm not sure that the City has any
10 jurisdiction on whether they approve -- 'cause I know
11 the City does have approval of certain products as
12 well.

13 Do you know whether the City of L.A.
14 has approved that product?

15 DR. YANG: No. Actually this plastic liner is
16 required by the State and the federal regulations.
17 The requirement is the 60-mil HDPE liner. And in
18 this case, we require a 80, which is slightly thicker
19 than that required.

20 And regarding the crack caused -- that
21 might be caused by the chemicals -- the testing
22 conducted, you know, that was mentioned by Mr. Smith
23 at the last board meeting, it was, like, conducted in
24 the laboratory.

25 And it was, like, immersed this

1 plastic into these liquids. And you had 100 percent
2 saturation concentrations. And after a period of
3 time -- several month, four month -- then you will
4 use force to crack and see susceptibility. It will
5 be easy to crack these material.

6 But in the landfills, the material is
7 buried beneath the protective layer. Actually, the
8 chemicals -- if any chemicals get into the waste
9 stream -- let's say a bottle of oil -- it's going to
10 be, like, mixed with other things, particularly
11 water.

12 So by the time that material's being
13 carried to, like, very close to the liner -- let's
14 say, the leachate collected in the sump -- it's very
15 low in concentration. Actually the concentration of
16 the total chemicals, organic chemicals, in the
17 landfill leachate from the Sunshine Canyon is around
18 200 ppm. That's counting everything including, like,
19 proteins, starch, and plant material, you know -- any
20 organic material.

21 For any chemicals that cause -- can
22 cause any damage to that, particularly immersion in
23 that test -- it's very doubtful -- the possibility of
24 seeing that happening. So it's very low.

25 CHAIR CLOKE: Miss Diamond?

1 VICE-CHAIR DIAMOND: I was wondering, Miss
2 Rasmussen, in your original WDRs, before any changes
3 were made, was the liner always suggested by the
4 staff always 60 millimeters rather than 80 or --
5 DR. YANG: Yes. It's always 60. And this, of
6 course, now has been required 80-mil.
7 VICE-CHAIR DIAMOND: Are there any other
8 places that you know of in the nation where 80 is
9 used?
10 DR. YANG: Not as I know. It's -- it might be
11 used somewhere. But I just don't --
12 VICE-CHAIR DIAMOND: You're not aware of it?
13 It might be, but you're not aware of it.
14 CHAIR CLOKE: Miss Rasmussen?
15 MR. PAK: I have one more question.
16 When you do the -- I'm not familiar
17 with how you close landfills -- but do you put a
18 layer of this membrane and then you have the dirt and
19 the gravel and then you dump trash and then, at a
20 certain point, do you do it again? Is it a
21 several --
22 DR. YANG: No. Actually it's not done until
23 the landfill's closed. When you --
24 MR. PAK: When you put the last --
25 DR. YANG: Last. Yes. At the top.

1 CHAIR CLOKE: There's a whole section about
2 wetlands and mitigation. And I would like to have
3 you briefly review that for us.

4 MS. RASMUSSEN: I would ask -- we have
5 somebody that is working directly on the wetlands
6 part -- Raymond Jay -- have him come up now.

7 MR. JAY: Madam Chair and Board Members. I
8 also have present Valerie Carrillo, staff who has
9 been working on the --

10 CHAIR CLOKE: Speak right into the mike.

11 MR. JAY: We also have Valerie Carrillo, a
12 staff member that's been working directly on the
13 project. I'm sorry. I didn't quite understand your
14 question.

15 CHAIR CLOKE: I'd like you to concisely
16 reiterate what the mitigation and -- for the wetlands
17 is and what it's going to be and where it's going to
18 be.

19 MR. JAY: The proposal that we received was
20 for an impact of 1 acre of actual wetlands and 2.4
21 acres of nonwetlands or riparian area. And what was
22 proposed was between a 3-to-1 and 4-to-1 ratio. And
23 that would be accumulating about 13 acres of
24 mitigation that had been proposed to occur in the
25 Chatsworth Reservoir area.

1 And based on other concerns, we've --
2 and discussion with the proponent, we've asked them
3 to go back and look locally to see if we can find a
4 smaller portion that could be done more locally to
5 allow possibly up to 2 acres or something like that
6 that could occur locally.

7 CHAIR CLOKE: This -- when this plan is
8 completed, will it come back to the Board?

9 MR. JAY: If you would like it to, it could.
10 Normally, it would come to staff, and it would be
11 determined if the mitigation that was proposed was
12 successful.

13 CHAIR CLOKE: Okay. That's how it works.
14 Thank you.

15 MR. JAY: You're welcome.

16 CHAIR CLOKE: Thank you very much.

17 Are there other staff questions at
18 this time?

19 Michael -- Mr. Lauffer, you're up.

20 Thank you, Miss Rasmussen.

21 MR. LAUFFER: Good morning, Madam Chair.

22 CHAIR CLOKE: Are you ready?

23 MR. NAHAI: I don't have questions for him.

24 MR. PAK: I think I had a question earlier on
25 was with regards to the action that the City is

1 proposing to take. And how does that relate to what
2 we're about to do in terms of taking action?

3 MR. LAUFFER: Board Member Pak -- I'm not sure
4 my microphone's on; hopefully everybody can hear
5 me -- from a straight-up legal perspective, the
6 City's actions are not a prerequisite to this Board
7 acting on Waste Discharge Requirements.

8 I certainly am sensitive -- and it's
9 been palpable in other meetings as well -- to the
10 Board's desire to have the complete lay of the
11 land -- both factually, legally, and politically --
12 on this item.

13 The Waste Discharge Requirements
14 themselves for landfills, as you've heard repeatedly
15 during the proceedings, are much more prescriptive
16 than most of our Waste Discharge Requirements. And
17 you've heard Miss Rasmussen and Wen Yang talking
18 about the liner requirements. And, you know, a
19 composite-liner in this case consists of both clay
20 and --

21 CHAIR CLOKE: Mr. Lauffer, I'm going to do the
22 same thing to you I did to Mr. Kracov. Please
23 confine yourself to answering the question.

24 MR. LAUFFER: So what this Board's obligation
25 from a legal perspective is to go through and ensure

1 that all the prescriptive requirements are met and
2 then to go through and ensure that water quality's
3 protected.

4 And then, finally -- and this is what
5 you've heard me say before with respect to the
6 greatest latitude that the Board has -- is to ensure
7 that conditions of pollution and nuisance are
8 addressed.

9 Staff has put before you Waste
10 Discharge Requirements that they believe are
11 satisfying all the prescriptive requirements,
12 protecting water quality, and will prevent a
13 condition of nuisance or pollution. And that
14 reflects in many respects as they that carry out
15 those prescriptive requirements.

16 There is one other legal obligation.
17 That is, this Board is generally required to consider
18 and act within 180 days of the completion of a
19 reported waste discharge. That time period actually
20 passed for us back in August.

21 So the desire to get a complete
22 picture of what the City may do in separate actions
23 is certainly a laudable goal. At the same time, from
24 a legal perspective, I feel incumbent to advise the
25 Board that we actually are well past our time to act

1 on this permit.

2 Obviously, even if we do not adopt the
3 Waste Discharge Requirements and Sunshine is allowed
4 to proceed as they propose with the reported waste
5 discharge, that doesn't rob this Board of its
6 continuing jurisdiction and its obligation to
7 ultimately issue Waste Discharge Requirements.

8 But, from a legal perspective, waiting
9 for the City and waiting for resolution of these
10 issues does not really bear on the prescriptive
11 requirements, the protection of water quality, and
12 the conditions of pollution or nuisance with respect
13 to the expansion of the landfill.

14 It may have obviously some
15 ramifications for what's going on at the existing
16 operation.

17 CHAIR CLOKE: I want to follow up on Mr. Pak's
18 question because I want to ask it -- the same
19 question -- with a slightly different point of view,
20 which is that you said that the City's actions were
21 separate from ours and ours are not dependent on
22 theirs.

23 Is it also true that theirs are not
24 dependent on ours? That is, were they to decide to
25 take whatever action they wanted to that they felt

1 was appropriate, the fact that we -- our action
2 today, whatever it was, is separate from -- excuse
3 me -- separate from theirs?

4 MR. LAUFFER: Correct. They're on completely
5 independent tracks.

6 And one thing I do want to
7 reiterate -- it was within my answer to Mr. Pak's
8 question -- but I do want to remind the Board, under
9 13263 of the Water Code, this Board always has the
10 authority to revise and reconsider Waste Discharge
11 Requirements.

12 And so certainly, to the extent that
13 something significant comes out of the City's
14 actions, this Board can take that into account,
15 regardless of what act you take today.

16 CHAIR CLOKE: And that would be in the form of
17 writing, you know, a reopener into the -- into the
18 act? Would that --

19 MR. LAUFFER: Technically, because these are
20 Waste Discharge Requirements and not a National
21 Pollution Discharge Elimination System, we don't even
22 need the reopener.

23 However, there are explicit reopeners
24 in this permit. And one of the reopeners is that you
25 basically say, whenever the Board believes it is

1 appropriate under 13263 of the Water Code to
2 reconsider the Waste Discharge Requirements, it may
3 do so.

4 Then there are two other explicit
5 reopeners, one of which goes back to the 401 issue
6 and the 404 issue -- in other words, wetlands and the
7 practicability or the alternative analysis that has
8 to be done under the 404 "Dredge and Fill Permit."

9 An then the second explicit reopener
10 is with respect to the resultant health study.

11 VICE-CHAIR DIAMOND: I have a question, Mr.
12 Lauffer. Just hypothetically, if we were to grant
13 the W -- rule on the WDRs and grant them today and
14 then, in January, the results of the study that the
15 City is conducting -- that Councilmember Smith talked
16 about on the contaminants that would directly affect
17 water quality -- came back and water quality was
18 shown to be directly affected adversely by these
19 contaminants, what would our -- what action might we
20 take as opposed to not granting them today and
21 deferring them until after that study comes back?

22 What would be the two different --
23 what would be the results of our ability to act on
24 water quality given the two kinds of decisions that
25 could be made today?

1 MR. LAUFFER: In answering your hypothetical
2 question, I'll have to provide a little bit of a
3 hypothetical myself.

4 And, that is, assuming that the City
5 comes back and is able to demonstrate a water-
6 quality impact -- and when we talk about water-
7 quality impact, of course, you have to parse out the
8 issue of "What's going into the sanitary sewer versus
9 an actual water-quality" -- or I'll even go broader
10 than that -- "a public health nuisance condition."

11 If that's demonstrated that there is,
12 as a result of the revised Waste Discharge
13 Requirements -- and it's always important to keep in
14 mind the existing landfill versus the proposed
15 expansion -- if it is demonstrated to this Board --
16 if this Board and its staff receive evidence that
17 there is a water-quality impact -- and that's where
18 the hypothetical is, that there is a water-quality
19 impact or that there is a public health and safety
20 issue -- in other words, a nuisance condition or a
21 condition of pollution as a result of the waste
22 discharge or the operation of the facility pursuant
23 to the Waste Discharge Requirements -- I would say
24 that it is incumbent upon this Board to reconsider
25 and revise the Waste Discharge Requirements to

1 incorporate any necessary requirements, restrictions,
2 or provisions to mitigate -- in other words, to
3 address and alleviate -- that condition of pollution,
4 nuisance, that water-quality impact.

5 And so, in terms of our abilities to
6 regulate the facility, there really isn't a
7 distinction if that water-quality impact is shown.

8 And if the Board were to,
9 hypothetically, adopt today and then, hypothetically,
10 down the road, a water-quality impact was
11 demonstrated, this Board would have an obligation,
12 under the Water Code, to go back and revise and
13 reconsider the Waste Discharge Requirements to
14 address that issue.

15 VICE-CHAIR DIAMOND: You don't think that it
16 would be different if we waited until January and
17 found out whether there was some -- there was
18 water-quality impact and then, in January, made this
19 decision, based on that information?

20 MR. LAUFFER: Well, there is a difference.
21 And that's the fact that we're trying to answer a
22 hypothetical. And that could be drawn out time and
23 time again. I mean already this is our third Board
24 meeting on it. And there is that legal obligation
25 for us to act on permits within 180 days.

1 CHAIR CLOKE: Okay.

2 MR. LAUFFER: So I think that --

3 CHAIR CLOKE: I'm going to remind you,
4 again -- let's stay right with the question that the
5 Board Members are asking you.

6 All right. Okay. Any other questions
7 for Mr. Lauffer?

8 All right. At this time, I've got two
9 Board Members who want to -- I apologize here -- I
10 have two Board Members who have time constraints and
11 I really -- I want to do our work. But I want to
12 get --

13 MR. LAUFFER: I fully appreciate it. I tend
14 to be long winded.

15 CHAIR CLOKE: That wasn't -- that wasn't the
16 point. So thank you very much.

17 MS. RUBALCAVA: Point of order, Miss Cloke.

18 CHAIR CLOKE: Please, Miss Rubalcava.

19 MS. RUBALCAVA: There have been issues that
20 were raised at the last hearing that BFI has not had
21 an opportunity to respond to. We did prepare a
22 letter, dated November 18 of this year, which was
23 sent to you through staff.

24 I don't know whether the Board Members
25 have it. It addresses this -- the issue of the HDPE

1 liner, which Councilmember Smith raised.

2 We have not had a chance to rebut
3 that. And I would like to have this put into the
4 record for your consideration. It was submitted
5 shortly after the hearing. And also I would like an
6 opportunity to address some of the questions that
7 have been raised today on behalf of BFI.

8 CHAIR CLOKE: You know, the only thing -- the
9 only opportunity that you have to do today is to
10 respond to questions asked by Board Members. So --
11 and since we weren't done with our question period,
12 you may have been called up and asked these questions
13 had you given us the chance.

14 MS. RUBALCAVA: Okay. I'm here now, if anyone
15 does have questions. But I would like to --

16 CHAIR CLOKE: If you'll --

17 MS. RUBALCAVA: -- respond to some of the
18 questions that were raised already.

19 CHAIR CLOKE: If you -- if you'll just let me
20 run the meeting, Miss Rubalcava, we'll, you know --
21 we do -- we are here asking questions of people.

22 MS. RUBALCAVA: Okay. In case I don't get
23 called up again --

24 CHAIR CLOKE: Miss Rubalcava --

25 MS. RUBALCAVA: -- may I have a decision on

1 the November 18 letter or --

2 CHAIR CLOKE: Miss Rubalcava --

3 MS. RUBALCAVA: -- if you'll -- will the Board

4 accept the --

5 CHAIR CLOKE: -- could you just wait one

6 minute and let us handle this? Thank you.

7 MR. PAK: Actually I did have a question to

8 the applicant.

9 CHAIR CLOKE: I had questions for them too,

10 but now I feel awkward asking them 'cause I feel

11 like, you know, I've been prompted.

12 MR. PAK: They say patience is a virtue and --

13 CHAIR CLOKE: Okay. We will pretend -- we

14 will pretend that that didn't happen.

15 Mr. Pak would like to ask Ms.

16 Rubalcava a question.

17 MS. RUBALCAVA: I would like to say, one of

18 the reasons I came up is that no one said they were

19 having any questions for us. When you asked each

20 person who they wanted to hear from, no one said they

21 wanted to hear from BFI.

22 CHAIR CLOKE: But --

23 MR. NAHAI: But -- but that is the Board's

24 prerogative.

25 MS. RUBALCAVA: Yeah. I understand that.

1 MR. NAHAI: We've closed our public testimony.
2 And therefore if we have questions, it is our right
3 to call people up. It's not up to you to lecture to
4 the Board as to -- as to what the Board's procedures
5 should be.

6 MS. RUBALCAVA: I understand that, Chairman
7 Nahai.

8 MR. NAHAI: So what you did -- what you did
9 was not right. It wouldn't be tolerated in a court.
10 You know that. And it shouldn't be tolerated here.

11 CHAIR CLOKE: And it's also very unfair to the
12 people from the Valley Coalition, who we did not
13 allow to speak, even though there are a number of
14 them here today.

15 And you also -- it also puts the Board
16 in an uncomfortable position because I, for example,
17 had several questions of you. Just because I didn't
18 say it out loud, doesn't mean that it didn't exist.

19 Mr. Pak has some. But really you --
20 you put us in an uncomfortable position. I don't
21 appreciate it.

22 MS. RUBALCAVA: Well --

23 CHAIR CLOKE: I don't appreciate being told
24 how to run the meeting either. If you have an
25 objection, you can write me, you know, a letter; make

1 a formal complaint; or call me on the telephone, as
2 you know you can do. I'm willing to talk to you and
3 work with you and anybody else who has business
4 before this Board.

5 MS. RUBALCAVA: Okay. I think you can still
6 understand, when you listed all the people you wanted
7 to hear questions from and we weren't added, why I
8 might have reached the conclusion --

9 MR. PAK: You know, let's not waste time going
10 back and forth --

11 MS. RUBALCAVA: Yes. I can --

12 MR. PAK: -- bickering.

13 My question to you is with regards to
14 the variance that the City raised. And I'd like to
15 get some clarification from the applicant as to what
16 is the story with that particular pipe? When were
17 they granted the variance with water conditions? And
18 does it -- in fact, does it impact what we're trying
19 to accomplish here today with your application?

20 MS. RUBALCAVA: Thank you. Well, first off,
21 if doesn't impact what you're trying to accomplish
22 today at all because it deals with industrial
23 discharges. And as the Board knows, from Water Code
24 Section 13260(a)(1), you do not issue permits for
25 discharges -- for industrial discharges. In other

1 words, you don't issue permits for discharges to
2 sewers.

3 What we're talking about entirely with
4 that particular variance that you raised is the
5 question of whether or not BFI's discharges to the
6 sanitary sewer are in conformance with the variance.
7 And that's all there is there.

8 So it really is irrelevant to your
9 determination today, which is with regards to "Are
10 there discharges to ground or surface water that
11 would impair water quality?" So this is entirely
12 within the jurisdiction of the sanitary sewer system.

13 CHAIR CLOKE: Do you have other questions, Mr.
14 Pak?

15 MR. PAK: No.

16 VICE-CHAIR DIAMOND: I have one.

17 Do you think, then -- is it your
18 opinion that it is within our responsibility, if we
19 hear that there is water-quality contamination, as a
20 result of the study, to act on that?

21 MS. RUBALCAVA: Are you speaking about
22 Councilmember Smith's study that he was discussing --

23 VICE-CHAIR DIAMOND: The technical advisory
24 committee study of contamination -- yes.

25 MS. RUBALCAVA: Yes. I would agree that -- I

1 would say that is not within your jurisdiction
2 because you have to think about what they're
3 studying. He was very clear. He is studying two
4 things -- one, the discharge after treatment, and,
5 two, the discharge before.

6 What is being collected before is
7 leachate. It is coming off the leachate-collection
8 system, which is above the liner. Okay?

9 So and that's on the County landfill.
10 That's what we're talking about. So whatever you
11 find in that particular discharge, there is no
12 evidence that that is going to groundwater.

13 In fact, there is evidence that it's
14 not going to groundwater because we have no evidence
15 that was released in the County landfill. The
16 monitoring wells downgradient of the County landfill
17 are not showing any evidence of a release at all.

18 So the fact that there are
19 constituents of concern in leachate -- which is then
20 collected, treated, and discharged to a sanitary
21 sewer -- does not establish any link at all that
22 groundwater quality, which is within your purview,
23 might be impacted. It simply says that there are
24 some constituents in the leachate.

25 Now, you also heard, I believe,

1 Mr. Yang say that, when you add up all the
2 constituents in the leachate, they add up to 200 ppm.
3 That is less than 1 percent. Leachate is over 99
4 percent water. Okay? And that's what's being
5 discharged to the sanitary sewer here.

6 VICE-CHAIR DIAMOND: Thank you.

7 CHAIR CLOKE: Are there any other questions?
8 I think mine was answered by the
9 questions before. Thank you.

10 MS. RUBALCAVA: All right. Could I just have
11 an answer as to whether you'll accept my letter into
12 the record?

13 CHAIR CLOKE: Mr. Lauffer, I want to be
14 consistent in my rulings here.

15 MR. LAUFFER: Yeah. My recommendation would
16 be to exclude the letter from the record. There is
17 no --

18 CHAIR CLOKE: Accept it ex-agenda?

19 MR. LAUFFER: Yeah. It will be part of the
20 files. And if necessary, for petition purposes, it
21 will be kept separate and apart. There isn't a due
22 process right to have an opportunity to respond to
23 every single issue that comes up during the hearing.

24 I think the Board has fully ferreted
25 out the questions of the liner issues with staff.

1 And my recommendation would be to be consistent, as
2 this Board has historically been, in enforcing
3 deadlines and enforcing deadlines for the submittal
4 of material.

5 CHAIR CLOKE: Then we'll accept this
6 ex-agenda.

7 MS. RUBALCAVA: Thank you. It's already been
8 submitted.

9 CHAIR CLOKE: Okay. Thank you.

10 Mr. Nahai would like to ask
11 Mr. Haueter from Supervisor Antonovich's office to
12 come up.

13 I guess I'm the one that's going to be
14 asking the question. Thank you for coming. I wanted
15 to know from you -- I know that the City has taken
16 various issues and actions -- I'd like to know the
17 status -- taken up various issues on which they have
18 taken action.

19 I'd like to know what the status of
20 those actions are, if there have been any new City --
21 County proposals on this issue.

22 MR. HAUETER: In this particular regard, with
23 what you're hearing today, no.

24 CHAIR CLOKE: With Sunshine Canyon.

25 MR. HAUETER: No.

1 CHAIR CLOKE: So you continue the health-
2 effects study?

3 MR. HAUETER: Yes. The health-effects study
4 by Dr. Simon is underway. It is expected to take a
5 considerable amount of time longer than we have here
6 today. The results -- that we've met twice with
7 residents in the communities. The study itself has
8 not actually been completed. So there's still
9 information to be gathered from that.

10 CHAIR CLOKE: Okay. I wanted to thank you,
11 for the County, for doing that. I think that it's a
12 very positive step for the community. And I really
13 think the whole Board appreciates it.

14 MR. HAUETER: Well, thank you very much. It
15 was at the prompting from here that we did that. We
16 wanted to be able to address the concerns of the
17 community.

18 CHAIR CLOKE: Thank you, Mr. Haueter. Thank
19 you for coming today.

20 Okay. Are there any other Board
21 Member questions for anyone?

22 Okay. Seeing none, now the entire
23 public hearing is closed -- the entire hearing is
24 closed. And the matter is before the Board. And I'd
25 like to ask if we could -- if I could have a motion

1 for discussion purposes.

2 MS. BUCKNER-LEVY: I'd be happy to make the
3 motion --

4 CHAIR CLOKE: Please.

5 MS. BUCKNER-LEVY: -- if the Chair would allow
6 me.

7 CHAIR CLOKE: Please.

8 MS. BUCKNER-LEVY: I would actually seek my
9 colleagues' support in continuing this item -- this
10 landfill item, the waste-discharge permit for BFI,
11 Sunshine Canyon -- till our January meeting.

12 I do that recognizing, of course, that
13 this has gone on for some time. And we've met here
14 and there and -- but I -- I just wanted -- in
15 introducing that motion, I want to thank
16 Councilmember Smith for his leadership in really
17 addressing what I believe are the issues before this
18 Board, which are water-quality issues.

19 They're a very narrow issue with
20 respect to this landfill. I recognize that. This is
21 a really complex, really critical land-use decision
22 that was made many years ago. And these things take
23 time.

24 But I also -- I would think it would
25 be remiss for us, because of those water-quality

1 issues related to the potential impacts on public
2 health and safety -- that we have the benefit of the
3 studies that are currently underway at the City.

4 And I, at the same time, also
5 recognize that, while these issues are very broad and
6 complex, that it disappoints me, quite frankly, as a
7 Board member sitting here that, again, this very
8 narrow aspect of this very large and complex landfill
9 issue would be sort of -- would come down to this,
10 again, very narrow permit before this Board.

11 And -- but I have no other choice or
12 at least I feel that I have no other choice but to
13 introduce a motion to continue this until January,
14 when we have the benefit of this information.

15 CHAIR CLOKE: Okay. So that's your motion,
16 and those are your arguments for the motion.

17 MS. BUCKNER-LEVY: Right.

18 CHAIR CLOKE: Is there a second to Ms.
19 Buckner's motion?

20 MR. SHAHEEN: Well, I would second that.

21 I mean listening -- continuing to
22 listen to this, I mean I'm still -- I heard the
23 advice, I guess, we had from counsel. I'm very
24 uncomfortable with a project of this type. We're
25 talking about "How long is this going to

1 continue?" -- decades, centuries and the like -- to
2 not bring all of this information in front of us.

3 And it seems like we're very close to
4 getting this open information and having access to it
5 and being able to make an intelligent decision on it.
6 So I would be very uncomfortable trying to move
7 forward today. And I would say we continue it to at
8 least the January meeting.

9 MR. NAHAI: Why don't we break first, and then
10 we do this motion?

11 CHAIR CLOKE: Well, it's okay. I think it's
12 okay to have a motion on the table. And then we can
13 have discussion on the motion. It's been moved and
14 seconded. Is there -- let's have discussion on the
15 motion.

16 MR. NAHAI: I mean normally we attempt to get
17 consensus on the Board going forward. And perhaps
18 this is one time that we won't. But I've got a
19 couple of things to say.

20 First of all, I'd like to say on the
21 record that I disagree with Ms. Rubalcava's attempts
22 to narrow and restrict the jurisdiction of the Board.

23 We do have a responsibility to look at
24 pollution issues, public health issues, nuisance
25 issues; and as our counsel has advised us, therefore,

1 it is not only appropriate but absolutely necessary
2 for us to look at an entire breadth of the questions
3 that come before us.

4 I think this is our third meeting and
5 hearing about this particular expansion issue. I
6 think --

7 CHAIR CLOKE: It's our fourth.

8 MR. NAHAI: Our fourth?

9 We've heard from the community in a
10 very profound way. We've waited for the results of
11 health studies so far. And -- but as a Board, we
12 always take pride in being guided by the dictates of
13 the law and the weight of the evidence. And the
14 dictates of the law and the weight of the evidence at
15 this time, I think, compel us to vote in favor of the
16 staff recommendation.

17 Having said that, I wouldn't support
18 it without a number of amendments and reopeners. I
19 still feel uncomfortable about the liner and what is
20 being proposed to us. I think we've heard compelling
21 evidence that the liner thickness needs to be
22 improved upon.

23 And I think that, as far as all of
24 these ongoing studies are concerned, we should have
25 mandatory reopeners so that, as these results come

1 in -- in the health study, from the study and
2 investigations that Mr. Kracov and Councilmember
3 Smith refer to -- that as those results come in, that
4 the matter is brought before us.

5 In other words, what I would propose
6 is that our permittee basically proceed at their own
7 peril and with the understanding that we want these
8 studies to be brought back before us.

9 We want to look at this matter again
10 and that, if and when we do, the permittee would face
11 the possibility of revisions and amendments and even
12 possibly revocation.

13 But I think, at this time, given the
14 evidence that's before us and the legal mandate that
15 we have, I think to have yet another continuance
16 would be a legal mistake. And so I wouldn't support
17 it.

18 CHAIR CLOKE: Okay. Are there other people
19 who wish to discuss the motion on the table?

20 MR. PAK: Yes. And I think I'm comfortable --
21 uncomfortable either way. This is not an easy
22 decision.

23 CHAIR CLOKE: No.

24 MR. PAK: I think certainly, though, a
25 decision has to be made, to the fairness of the

1 applicant. I think we've heard as much testimony as
2 we can. This is a Regional Water Quality Control
3 Board, which means we take issues on a site-specific,
4 but we take the Region as a whole when we consider
5 matters.

6 The City of L.A. certainly has its
7 share of issues that are going to deal with regional
8 issues. I live the near the airport. The airport
9 expansion is going through, and that impacts me as a
10 neighbor of the airport. But understand that it has
11 a regional impact as well.

12 And so but looking at what was
13 presented to us and the action that we're agreeing to
14 take from the staff's report on what we can do,
15 really to make a decision -- and I concur with
16 Mr. Nahai, that to continue this for another month --
17 'cause the City's going to take its own track.

18 And they will come up with their own
19 findings. And if they do have a compelling reason,
20 we can look at this again. But legally, from what we
21 have to do, I think we've had -- what? -- two
22 meetings already. To continue this again to January,
23 I just don't think is something that we should really
24 do.

25 CHAIR CLOKE: This is Meeting Number 4. I

1 just want to say that for the record.

2 MS. BUCKNER-LEVY: This is December. It's not
3 August. So I recognize that we went beyond our
4 180-day period in August. And it's now December. So
5 to me, frankly, another 30 days really ought not make
6 any difference -- that much of a difference on an
7 issue as critical as this one.

8 And, you know, I'm more than happy to
9 have the, you know, look at an up-or-down vote. But
10 it seems to me that you're right. It is a regional
11 issue.

12 But it's an issue that is of such
13 concern -- and we've heard this from the North Valley
14 Coalition and the other neighbors, that, to me, we
15 ought -- we ought to really have the benefit of all
16 the information. And I'm not convinced that we have
17 it.

18 So why don't we just have an up-and-
19 down vote on this motion?

20 CHAIR CLOKE: So we've had a call for -- we've
21 had a call for a vote for the motion on the table,
22 which is a continuance to January.

23 All those in favor, please say, "Aye."

24 MS. BUCKNER-LEVY: Aye.

25 MR. SHAHEEN: Aye.

1 CHAIR CLOKE: All those opposed, please say,
2 "No."
3 MR. NAHAI: No.
4 MR. PAK: No.
5 VICE-CHAIR DIAMOND: No.
6 CHAIR CLOKE: No.
7 And the motion fails 4 to 2.
8 Okay. I would like now to consider a
9 motion on the substance.
10 MR. NAHAI: You need a new motion?
11 CHAIR CLOKE: Yes. I need a new motion at
12 this point.
13 MR. NAHAI: I would like, before introducing
14 the motion, if it's appropriate, to have a discussion
15 between the Board about the liner thickness because I
16 am concerned about it and I would like to get my
17 colleagues' views on it before introducing a motion.
18 CHAIR CLOKE: Okay. That's -- that's fine.
19 Miss Diamond, do you want to start?
20 You looked like --
21 VICE-CHAIR DIAMOND: Yeah. I mean -- I guess,
22 I voted the vote that I did because I think that we,
23 as a Board, always do what we believe is legal. And
24 I think, under the Clean Water Act, that this is the
25 position that we need to take. So I agree with Board

1 Member Nahai on that.

2 But I am also very conflicted about
3 this -- this liner. I'm sorry that, you know, that
4 city council that voted for it, those many years ago,
5 didn't have any the -- didn't take a position that
6 was stronger, as is being urged today by
7 Councilmember Smith and by Mayor Hahn.

8 But this is where it's come to.
9 We're -- we've left with this. The decision has now
10 come to us. I want to do whatever I can do -- and I
11 think all of us do -- to make sure that this is the
12 safest landfill possible. And so I would not be
13 comfortable unless we had a liner that was -- that
14 was as safe as we believed it could be.

15 And so I would be -- I would be in
16 support of the 80-millimeter. I'm not concerned --

17 MR. NAHAI: The 80-millimeter is what staff is
18 recommending.

19 VICE-CHAIR DIAMOND: I mean I --

20 CHAIR CLOKE: Double --

21 VICE-CHAIR DIAMOND: -- of the double. I'd --
22 I'd very -- I'd like to see us put in a double-liner.
23 I feel that it is incumbent upon us, as a Board, to
24 do whatever we can to -- to protect water quality.
25 And I'm not convinced that this won't do more to

1 protect water quality no matter, you know.

2 Most -- most often we've heard that

3 landfills leak, no matter what the liner. So to me,

4 the double-liner is going to give us that much more

5 protection for that much longer time.

6 CHAIR CLOKE: Are there other board members

7 who want to comment on the liner issue?

8 MR. NAHAI: But in --

9 CHAIR CLOKE: Are you ready?

10 MR. NAHAI: Well, then I would move adoption

11 of the staff recommendation with the amendment that a

12 double-liner be installed. I think that would be

13 from 60 to -- it would be 120, therefore, or would it

14 be only a 100, when we talk about a double-liner?

15 MR. LAUFFER: Yeah. Mr. Nahai, the Board at

16 this point may want to hear from staff because there

17 are terms of art here -- and it sounds like you may

18 be referring to "doubling the thicknesses" --

19 CHAIR CLOKE: Right.

20 MR. LAUFFER: -- as opposed to a "double-

21 liner."

22 CHAIR CLOKE: Mr. Pak?

23 MR. PAK: I guess what we could do is that --

24 I guess the design of how they do that -- just

25 putting two layers on top of each other may not be

1 the best design.

2 MR. NAHAI: You're right. The staff
3 recommendation is for an 80.

4 CHAIR CLOKE: You have to identify yourself.

5 MR. NELSON: My name is Rod Nelson. I'm the
6 Landfill Unit Chief here at Regional Board. Staff
7 recommendation now -- originally, when we brought the
8 WDRs to the Board in July, we recommended -- we
9 proposed in the WDRs that they have a 60-mil liner.
10 That's "60/1000 of an inch," not "millimeters," just
11 for -- and with a 2-foot compacted-clay liner.

12 That is the standard federal and state
13 requirement for a Class 3 municipal solid waste
14 landfill. Then, as a result of testimony heard and I
15 believe the Board recommended that we increase the
16 thickness of the plastic liner that was originally
17 60-mil to 80-mil -- 80/1000-of-an-inch thick -- and
18 to increase the thickness of the 2-foot
19 compacted-clay liner, which is a standard for all of
20 our landfills fact -- in fact, the federal standard
21 for the entire United States -- to increase that from
22 2 feet to 4 feet.

23 Now -- and I can see where it's very
24 confusing because it gets confusing for me when you
25 talk about having a "double-liner." Now, the

1 standard liner, even the one that's in the WDRs now,
2 is a 2-part liner. It's a requirement -- a
3 composite-liner.

4 Is that a "double-liner"? Not really.
5 It's the requirement that has to be met. Some people
6 say, when they want a double-liner, they're talking
7 about a double-composite-liner -- 2 separate layers
8 of synthetic material and 2 separate clay layers.
9 That's a "double-composite-liner." So I want to make
10 that distinction.

11 CHAIR CLOKE: Mr. Nelson, that is what the
12 community group has been proposing is the --

13 MR. NELSON: Double-composite.

14 CHAIR CLOKE: Thank you.

15 MR. NELSON: They have two liners, each with
16 two parts.

17 MR. NAHAI: Exactly. So as far as the clay
18 layer is concerned, it was proposed to be 2 feet.
19 That's going to 4 feet.

20 MR. NELSON: That's what's in the WDRs at this
21 time.

22 MR. NAHAI: Okay. When -- when -- I just want
23 to make sure we're on the same page -- when you --
24 what you understand to be a "double-composite-liner,"
25 with respect to plastic membrane, what would be your

1 "mils," as you put it, on that?

2 MR. NELSON: A double-composite -- a composite
3 liner in both the State and federal regs, is a
4 plastic layer of 60-mil thickness --

5 MR. NAHAI: Okay.

6 MR. NELSON: -- and 2 feet of clay.

7 MR. NAHAI: All right.

8 MR. NELSON: A double-composite-liner would be
9 to make two of these liners; so you have a 60-mil
10 liner and then clay and then in between you'd usually
11 have a drainage layer -- this gets into the design --
12 but, essentially, you're going to have a synthetic
13 liner and clay.

14 And underneath that, at some point --
15 it may be separated -- you'd have another synthetic
16 liner and clay.

17 MR. NAHAI: All right.

18 CHAIR CLOKE: That's what has been requested
19 by both the community and the City and the County, as
20 I understand it.

21 MR. NELSON: That is correct, in my
22 understanding.

23 MR. NAHAI: All right. So -- okay. So then
24 that is the -- thank you for clarifying that.

25 MR. NELSON: Yes.

1 MR. NAHAI: And that is what we're talking
2 about -- a double-composite-liner.

3 MR. NELSON: Yes.

4 MR. NAHAI: So that's one amendment to the
5 staff recommendation.

6 And, secondly, I understand that we
7 don't have to have this in the WDRs as such, but I
8 would like to put, at least on the record -- and
9 perhaps it would be better to have it in the WDRs
10 specifically that -- and that is my motion, that it
11 be included specifically -- that we have reopeners,
12 that the various investigations that Councilmember
13 Smith has engendered and the investigations that the
14 city attorney's office is pursuing -- that the
15 results of those -- the investigations -- the reports
16 be brought back to us.

17 We've been told that the -- that it is
18 anticipated that they will be completed in January.
19 And the January 29th Board meeting would be an ideal
20 time for us to report -- to hear the results of those
21 reports.

22 I would also like the health study --
23 health studies that are being conducted by the
24 County -- for those results to be brought to us as
25 soon as completed. And maybe the way to proceed is

1 that, once we have those reports, that at that point
2 the Board can decide upon a reopener -- Michael? --
3 or do we have to actually provide for a reopener at
4 this time in order to receive those reports and
5 assess their impacts?

6 MR. LAUFFER: As Waste Discharge Requirements,
7 Mr. Nahai, it's not going to be -- because those are
8 solely Waste Discharge Requirements, it does not have
9 to be within the four corners of the document.
10 However, I would recommend that we put in place very
11 specific language.

12 If the Board looks at Page 11-dash-26
13 of today's Agenda packet, you will see a paragraph
14 entitled "Paragraph N -- Reopeners." Based on what
15 I'm hearing -- and I just want to throw this out for
16 your consideration in crafting your motion -- those
17 reopeners are -- the Board will revise the Waste
18 Discharge Requirements if these three factors come
19 into play.

20 You may want to consider, in crafting
21 your motion, that there be a new paragraph, perhaps a
22 Paragraph N called "Reconsideration" or something to
23 that effect and then renumber the "Rescissions"
24 paragraph to Paragraph O.

25 And essentially it sounds like you

1 actually want a report to come back to the Board
2 itself after hearing about the health studies or
3 after the completion of the health studies and after
4 the City of L.A. completes its studies, that the
5 Board actually has this as an agenda item so it can
6 digest those and figure out whether or not to direct
7 reconsideration and revision of the permit.

8 CHAIR CLOKE: Yes. Correct.

9 MR. NAHAI: But, in particular, I want it to
10 be referred to in the permittee -- in the permit
11 because I want --

12 MR. LAUFFER: Yes.

13 MR. NAHAI: -- because I want the permittee to
14 be absolutely on notice of the fact that this Board
15 may well reconsider and make substantial revisions to
16 the WDRs once those results come back.

17 MR. LAUFFER: Yes. And that's why I would
18 recommend that it actually be a new Paragraph N
19 entitled "Reconsideration" specifying -- and you can
20 either direct me to craft some language quickly here
21 or you're always very good yourself at crafting the
22 language -- that the Regional Board will reconsider
23 these requirements.

24 And it may be easier just to set a
25 date certain as opposed to waiting for those two

1 events and just have one Board meeting. I do also
2 want to mention, in crafting your motion, that you
3 may, with respect to the double-composite-liner -- a
4 finding would be necessary.

5 And so, in the discussions between the
6 Board, you may want to discuss that issue in terms of
7 what a finding would look like to justify that
8 double-composite-layer.

9 MR. NAHAI: Well, I think that the record is
10 replete with evidence that's been presented to us
11 that the liner, as recommend by staff, may not be
12 safe under these circumstances. And we're taking
13 that testimony to heart and that we're -- that is why
14 we're requiring a double-composite-liner, you know.

15 MR. LAUFFER: Well, and essentially what you
16 went through right there is the finding. But in
17 order to fulfill our obligations under Topanga and
18 other cases, it's important that the Board bridge
19 that analytical gap to show why it's making that
20 requirement.

21 And we normally reference provisions
22 in the record and "Here would be the testimony." And
23 you just may want to articulate that as the Board
24 discusses the motion.

25 MR. NAHAI: Okay. I think -- I think -- all

1 right. So do we -- do we leave that to you to craft?
2 Or do you want me to articulate what the finding
3 would be?

4 MR. LAUFFER: The Board should have that
5 finding before it votes. You can certainly direct me
6 to start crafting it --

7 CHAIR CLOKE: While we're discussing it.

8 MR. LAUFFER: -- while it's being --

9 MR. NAHAI: I think the finding would reflect
10 the fact that the testimony presented to us referred
11 to numerous studies.

12 You also have the testimony of the
13 community as well as the evidence of the -- of
14 Councilmember Smith and others -- all to the effect
15 that the composite liner, as recommended by staff,
16 may not be inadequate -- may be inadequate under
17 these circumstances, given the totality of the
18 circumstances affecting this particular landfill.

19 And for all of those reasons and
20 giving credence to that evidence and testimony, we
21 believe that a double-composite-liner would be more
22 protective of all of the various mandates that this
23 Board has, including water quality, the threat of
24 pollution, the threat of public nuisance.

25 CHAIR CLOKE: I would like to ask you if it

1 would be okay to put in some kind of a reopener on
2 the wetlands and riparian mitigation. I'd like to
3 see that when it comes back.

4 Julie wants to speak; but, first,
5 we're going to finish the motion. We're going to see
6 whether the motion has a second or not, and then
7 we'll have discussion from everyone.

8 MS. BUCKNER-LEVY: I just wanted to contribute
9 basically a friendly amendment, even though I'm not
10 going to vote "Yes" on the motion.

11 But in the interests of being
12 collegial, I thought perhaps our staff could, if
13 David was willing to accept such a friendly
14 amendment, that our staff could participate in the
15 peer review and perhaps the City studies --

16 MR. NAHAI: I don't know, Julie. I'd have to
17 think about that.

18 MS. BUCKNER-LEVY: Fine.

19 MR. NAHAI: No. Of course.

20 MS. BUCKNER-LEVY: May I just say that I, as
21 always, appreciate David's rigor. And, you know,
22 he's always excellent, as Michael says, at crafting
23 motions and has gone out of his way to make sure
24 that, in adopting this permit, as staff recommends,
25 with all the changes and David's rigor is much

1 appreciated by me.

2 And yet at the same time, I just want
3 to say for the record that, regardless of all of
4 these additional provisions and changes and reopeners
5 and having it come back on January 29, it's -- this
6 Board is -- will be perceived -- and, in fact, is
7 going to be giving the final permit -- and this will
8 be perceived as the final hurdle for BFI to expand,
9 whether or not we're -- our job is mandated water --
10 we have a mandate to be protective of water quality
11 and human health and safety -- that the perception
12 will be -- and I recognize that -- this is the final
13 hurdle and they've crossed it. And --

14 CHAIR CLOKE: Julie, I don't want to cut you
15 off now. But I want to keep to making the motion
16 now. And then I'll give you all the time you need to
17 make your considerations known.

18 (Brief interruption.)

19 CHAIR CLOKE: Was there more to your motion,
20 Mr. Nahai?

21 MR. NAHAI: You have an amendment regarding
22 the wetlands and the --

23 CHAIR CLOKE: Right. I would like that -- and
24 that was discussed with staff earlier -- that that
25 plan is sometimes approved at the staff level. And I

1 would like it to be submitted to the Board as an
2 agenda item for consideration and discussion and
3 approval at the Board level.

4 And that gives the public the
5 opportunity to review that document and suggest
6 locations and other matters that could actually
7 provide a benefit for the community that's being
8 impacted by the landfill to also receive some of the
9 benefits of the mitigations, which is how we usually
10 try to do things.

11 And if there's not the land available
12 right there, we may do something there and then
13 something, some other place. But at least we'll have
14 a chance to look at it and discuss it.

15 Were there any other comments in terms
16 of crafting the motion that people wanted to add?
17 I'll give everybody a chance to talk but -- no?
18 Okay.

19 It's been moved by Nahai and seconded
20 by "Mr." Diamond --

21 Mr. Dickerson?

22 Ms. Diamond, I just changed you. A
23 change up here.

24 Mr. Dickerson.

25 MR. DICKERSON: My apologies. Just a

1 technical question -- with regard to the
2 double-liner --
3 CHAIR CLOKE: Yes.
4 MR. DICKERSON: -- were you talking about a
5 double-liner of 60 mils each or something different?
6 CHAIR CLOKE: I think --
7 MR. PAK: No. Double-composite --
8 CHAIR CLOKE: I think once it's a
9 double-composite, I think it can be the 60-mil --
10 MR. DICKERSON: Thanks.
11 CHAIR CLOKE: -- at each level --
12 MR. DICKERSON: Thank you.
13 CHAIR CLOKE: -- because you're -- you know,
14 because you're doing it twice --
15 MR. DICKERSON: Right.
16 CHAIR CLOKE: -- so you're getting all the
17 extra protection for that, unless somebody disagrees
18 with me.
19 MR. NAHAI: No. That's --
20 CHAIR CLOKE: Okay. It's been moved by
21 Mr. Nahai, seconded by Miss Diamond. And now, if we
22 could have discussion on the motion. Anybody? Mr.
23 Pak? Mr. Shaheen? Speak to the motion itself?
24 MR. NAHAI: I just wanted to --
25 CHAIR CLOKE: Please go ahead. But when it's

1 time to leave, I don't want anyone -- when the
2 Board's quorum is going to break up, I don't want
3 anybody to look at me like I'm as mean as I can be up
4 here.

5 MR. NAHAI: No. I'd just like to say that --
6 and I fully appreciate what you're saying. And no
7 one can doubt that this has been, for this Board,
8 really one of the most agonizing, you know,
9 procedures that we have gone because we've seen the
10 pain of the community.

11 And I think we've done our utmost not
12 to turn our backs on them. We've done our utmost to
13 listen to their concerns and to try to address them.

14 But, you know, as a Board, we have to
15 make sure that our integrity is intact. We have to
16 make sure that we deal with the law and the evidence
17 that's before us. And I think we've accomplished
18 that as a Board.

19 And I think the community that's come
20 to us has known that they're going to come to us and
21 they're not to get a politicized response, that
22 they're going to get people up here that are going to
23 listen to them and hear them and hear their side of
24 the story -- that, at the end of the day, we're going
25 to do what we believe to be right from the law and

1 the evidence.

2 And the law and the evidence that we
3 have right now -- you know, we don't have any
4 compelling evidence of a cancer cluster. We don't
5 have compelling evidence that this landfill is
6 actually making people sick.

7 So at this point in time, I think that
8 we have to -- we have to go with the staff
9 recommendation.

10 But if that evidence ever gets
11 presented to us, what we're saying to the community
12 is that, if that comes back and we see those
13 connections, you know, we will act with the same
14 vigor and strength as we have in hearing this up to
15 this point in time.

16 So I mean I would like the community
17 to go away not thinking we that we denied them their
18 side of the story at this point but that we've left
19 that door completely open. And I hope that whoever
20 reports on this decision really understands that
21 because I think that's what we really did.

22 VICE-CHAIR DIAMOND: I'd like to make one
23 statement. I'd just like to say, I hope that, though
24 our Board has come to this decision today or will be
25 coming to this decision today, that the City and the

1 County and the political people who have the
2 opportunity to do much more than posture about how
3 they feel about this, will take that opportunity and
4 really have the courage of their convictions and do
5 something about that so that, if this should come
6 back to us, we have the support of the political
7 people.

8 But we are not the ones on the line
9 because we can only make this narrow decision. So if
10 there are electives who can have courage and if they
11 believe in the results of their study that something
12 should be done, then they should do that. And then
13 we can take action from there.

14 CHAIR CLOKE: Are there any other Board
15 Members wishing to comment?

16 Well, I would like to -- I would like
17 to say that this has obviously been a difficult
18 matter for the Board. And it's been difficult
19 because not only because of the concerns of the
20 community but it's also been difficult because we
21 recognize that we need to have a way to dispose of
22 our trash.

23 So if we didn't need that, we wouldn't
24 need to have a landfill. And so we do have a
25 regional responsibility to look at the larger picture

1 and to understand the big picture.

2 And in that regard, I want to applaud
3 the mayor's office and the City of Los Angeles for
4 their trash-reduction efforts that they have begun,
5 which I think really were catalyzed in large part by
6 their recognition of the problem as it unfolded in
7 front of this Board.

8 And I think we all have to look at
9 conservation, recycling, trash reduction, solid-waste
10 reduction, and realize that the best way to solve
11 this problem is to have the least amount of trash
12 that needs to be disposed in a landfill that we
13 possibly can, as a society.

14 Secondly, I also want to thank the
15 County for the -- Dr. Simon, in particular, and the
16 County Board of Supervisors, in particular -- for
17 their the health-effects study because it is
18 difficult. And we don't have the knowledge to know
19 whether or not there's any causal relationship.

20 But, again, I believe that we were
21 able to act as a catalyst in allowing that study to
22 be concept -- to be conceptualized and to go forward.

23 And -- I know Mr. Nahai's going to
24 read his motion -- all of this information will come
25 back to us. And, of course, the fact that the land-

1 use issue -- this is not a land-use board. So the
2 decision on siting is not a decision that rests with
3 this board. The decision on siting belongs properly
4 to both the County and the City Council and Board of
5 Supervisors.

6 And our responsibility is to do our
7 utmost to make this the safest, cleanest, and best-
8 operating landfill that's within our power to do.
9 Excuse me.

10 And I would like to say to our staff
11 that these are excellent WDRs. They've really done a
12 terrific job in meeting and -- making these WDRs
13 absolutely state of the art, the best possible that
14 they could be, the most highly protective that's
15 within our current technical and scientific knowledge
16 to do so. And I appreciate that as well.

17 And I also want to thank everyone for
18 coming to so many meetings and helping to educate us
19 and to express to us your concerns. And we -- and I
20 hope that -- that you will understand that we have
21 tried to be as fair and as respectful of all parties
22 as we could be. And with that, I would like to ask
23 if we're ready to vote.

24 MR. LAUFFER: Before the Board votes, would it
25 be possible to go through and make absolutely clear

1 what the motion is? The record's been very -- fairly
2 convoluted in terms of the ideas that are being
3 incorporated. And I want to make sure that it's
4 absolutely accurate.

5 If possible, I do have a finding that
6 tries to track what Mr. Nahai offered. I'd like to
7 try to read that into the record so that it's clear.

8 CHAIR CLOKE: Okay. Why don't you try to find
9 it? And then the Board will be able to vote on the
10 motion to --

11 MR. NAHAI: Well, let me try to --

12 MR. LAUFFER: Then I'd like to go through the
13 provisions as well.

14 CHAIR CLOKE: Yeah. What did I just say?

15 MR. NAHAI: -- the motion and then --

16 CHAIR CLOKE: Oh, okay.

17 THE REPORTER: Will you read slowly, please.

18 MR. LAUFFER: I will do my best to read
19 slowly.

20 THE REPORTER: Thank you.

21 MR. LAUFFER: First, there would be a proposed
22 Finding. It will be inserted in the appropriate
23 place. My quick take on it is that it would appear
24 probably in the proximity of Finding Forty -- it
25 would be a new Finding 47. There would be

1 renumbering thereafter.

2 "The Regional Water Quality Control
3 Board received significant testimony that a single-
4 composite-liner may not be sufficient to protect
5 water quality, prevent public nuisance, and prevent
6 conditions of pollution. Based -- period.

7 "Based on the record and considering
8 the totality of the circumstances -- comma -- the
9 Regional Board finds that prevention of public
10 nuisance and protection of water quality requires
11 more than the minimum single-composite-liner
12 specified by Title 27 of the California Code of
13 Regulations -- period.

14 "Given the proximity to important
15 water resources for the City of Los Angeles and the
16 proximity to surrounding communities, these
17 requirements specify a double-composite-liner to
18 ensure maximum reasonable protection of the Region's
19 water resources -- period."

20 And that would be the conclusion of the
21 Finding.

22 MR. NAHAI: Just where you say, "given the
23 proximity, et cetera," could we also add in there,
24 you know, "and other factors"?

25 MR. LAUFFER: Certainly.

1 MR. NAHAI: Because there are seismic
2 considerations and other things as well. But we
3 don't need to list them all exclusively, I think. We
4 can just list "other factors as presented by the
5 evidence" or "by the record."

6 MR. LAUFFER: Absolutely.

7 The provision to implement the double-
8 composite-liner -- and I think the motion should
9 include authority for this, to make sure that staff
10 "finds" conforming changes elsewhere in the order if
11 it's determined necessary -- but I believe all of
12 them will be embraced in -- on Page 11-dash-16 in
13 Paragraph 3. That's where the existing single-
14 composite-liner is specified.

15 Staff will insert the appropriate
16 definition of a "double-composite-liner" with a
17 60-mil thickness and a 2-foot base layer.

18 Then, in terms of "provisions for
19 reconsideration," what I provided to Mr. Nahai was
20 that there be a new paragraph entitled
21 "Reconsideration."

22 I'm a little unclear if they -- the
23 Board just wants to encompass one reconsideration,
24 probably late in the spring, that would probably try
25 to incorporate all the health studies and the City of

1 L.A.'s results?

2 CHAIR CLOKE: I think we want them as they
3 come in, don't we? Yeah. We want them as they come
4 in.

5 MR. LAUFFER: So there will be a sequence of
6 Board meetings. Okay. So that provision would
7 read --

8 CHAIR CLOKE: Well, there will be a sequence
9 of reports and Agenda items. But we can decide,
10 having read it, whether or not it's a consent item or
11 whether or not we want to direct staff to do
12 something else.

13 MR. LAUFFER: Okay.

14 CHAIR CLOKE: Does that make sense?

15 MR. LAUFFER: Yes, it does. And I'm going to
16 be thinking on my feet as I read the language, then.

17 There will be a new Paragraph N. This
18 will be entered on Page 11-dash-26, entitled
19 "Reconsideration."

20 And that paragraph would read: "The
21 Regional Board will receive additional information
22 concerning the following items as they become
23 available -- colon -- 1. The City of Los Angeles's
24 completion of studies with respect to discharges to
25 the sanitary sewer system; and, 2, the conclusion of

1 health studies by the County of Los Angeles and the
2 USC Cancer Registry -- period."

3 And then there would be a sentence
4 that would read "Based on the reports provided to the
5 Regional Board, the Board may direct staff to revise
6 the Waste Discharge Requirements -- period."

7 MR. NAHAI: A couple of comments: You should
8 start that paragraph, if I may, Michael, by saying,
9 "In addition to and without limiting the reopeners
10 referred to in Paragraph M above," so that it's clear
11 it doesn't supersede that or limit it in any way.

12 MR. LAUFFER: Certainly.

13 MR. NAHAI: And the second thing is that, if
14 you wanted wetlands to be specifically referred to --

15 MR. LAUFFER: I would -- I would --

16 CHAIR CLOKE: That doesn't have to be in --
17 okay.

18 MR. LAUFFER: -- I would actually propose
19 that -- I'm not quite finished.

20 I would actually propose, because
21 that's not technically revising the Waste Discharge
22 Requirements, that there now be a new Paragraph O,
23 entitled "Water-Quality Certification," that
24 specifies -- quote -- "Regional Board staff shall
25 bring the discharger's application for water-quality

1 certification to the Regional Board for consideration
2 at a Regional Board meeting" --

3 MR. NAHAI: That -- that's fine. Okay.

4 MR. LAUFFER: -- period.

5 MR. NAHAI: But going back to the previous
6 paragraph --

7 MR. LAUFFER: Yes, sir.

8 MR. NAHAI: -- you used the word "revised" in
9 terms of what the Board can do in the future, based
10 upon these reports. I don't want to limit it in that
11 way. If, you know, just say, "revised" or "take such
12 other action" --

13 MR. LAUFFER: "Or such other action the Board
14 deems appropriate." Okay. I think that -- that -- I
15 believe that addresses all the issues that were
16 raised in the motion. I think the record will be
17 clear.

18 MR. NAHAI: All right. And then in the
19 paragraph dealing with the composite liner, in
20 11-dash-16, you may want to just add a catchall that
21 says that "References in these WDRs to the" --
22 quote -- "'liners' shall be deemed to refer to a
23 double-composite-liner system as set forth above." I
24 mean that may help.

25 MR. LAUFFER: Yeah. Assuming that the motion

1 embraces making conforming changes to the order,
2 staff will be happy to do that.

3 MR. NAHAI: Okay.

4 CHAIR CLOKE: Do you accept that? Yeah.

5 Okay. Now, I would like to call for
6 the vote on the motion as clarified by --

7 (Off-the-record discussion between
8 Chair Cloke and Mr. Nahai.)

9 CHAIR CLOKE: Mr. Lauffer, can I ask you a
10 question, please.

11 In respect to the City's -- the
12 portion of the motion that deals with the City, could
13 we make it less specific and more generic, because
14 the City's reviewing a number of conditions having to
15 do with this and so that, you know -- so that it
16 allowed us to look at any action that was relevant to
17 our decision-making process?

18 Or do you think that the language
19 already allows that?

20 MR. LAUFFER: The language is very narrowly
21 tailored at this point just to the studies on the
22 sanitary sewer. I think it's important that, when
23 that provision is revised, we limit it probably -- or
24 that it be limited to issues raised today because,
25 otherwise potentially we could have the City coming

1 up, seriatim, raising new issues all the time.

2 Therefore we'd then have an

3 obligation, if this reconsideration provision was

4 introduced, to actually --

5 CHAIR CLOKE: Okay. So --

6 MR. LAUFFER: -- receive it. So --

7 CHAIR CLOKE: -- if I asked the question the

8 other way -- if there were to be some action by the

9 City that was important, we also have a general

10 reopener that we could exercise our authority under;

11 is that correct?

12 MR. LAUFFER: We already have that. Yes.

13 There is already that authority. But certainly the

14 Board has the discretion to specify, in that new

15 Paragraph N-1, that I just provided -- if you wanted

16 to name things beyond the sanitary sewer study --

17 VICE-CHAIR DIAMOND: Well, what about the

18 contaminants, the study of the contaminants, and

19 anything that has to do with our own authority over

20 the public nuisance, pollution, water quality?

21 MR. LAUFFER: Well, that's -- that, as I

22 understood Mr. Smith describing it, was the sanitary

23 sewer study. I mean that's where you're looking at

24 the leachate coming into the sanitary sewer. But

25 there are other issues with respect to, for example,

1 the variance. I'm not sure if this Board is going to
2 reconsider, based on that issue.

3 MR. NAHAI: But -- but we might, though. I
4 mean --

5 CHAIR CLOKE: Yeah. I just would like to give
6 us -- I'd like to not confine us quite so tightly.
7 But I want, of course, to do it in a more appropriate
8 way.

9 MR. NAHAI: Couldn't we say "or other City
10 investigations"?

11 MR. LAUFFER: That's certainly true.

12 And that's actually why, though, I was
13 initially proposing that you may want to consider
14 having a date certain by which the Board would just
15 try to wrap all this together, though, because,
16 otherwise, it becomes open-ended and throughout the
17 life of the WDRs, if, in 3 years, the City came up
18 with a new study that was potentially related to
19 water quality, this Board, because of the way the
20 WDRs would be adopted with that motion, would then
21 have an obligation to reconsider it.

22 And for various reasons, that may not
23 be in the Board's interest to constantly have
24 essentially the ability of the City to dictate this
25 Board's agenda. So that was why I was at least

1 trying --

2 CHAIR CLOKE: I don't understand --

3 MR. LAUFFER: -- to frame it in terms of --

4 CHAIR CLOKE: -- why would they be dictating

5 the agenda? We would be informed as a Board. And it

6 would be our choice whether or not we wanted to --

7 MR. LAUFFER: Yes. But --

8 CHAIR CLOKE: -- deliberate in public and, you

9 know, hear -- have a staff report or whatever.

10 MR. LAUFFER: And that's fine as long as the

11 Board realizes that, if the City came forward with a

12 new study and basically told Mr. Dickerson, "This is

13 a study under N-1," regardless of what the issue is

14 and regardless of the time, this Board would have to,

15 as presently drafted, have an informational item on

16 that.

17 CHAIR CLOKE: Well, can't we do something so

18 that it affects our jurisdiction and water quality, I

19 mean --

20 MR. LAUFFER: Well, and that's --

21 CHAIR CLOKE: -- without being just on the

22 sewer issue?

23 MR. NAHAI: Well -- well, could we -- or could

24 you craft that as a reservation of the right in favor

25 of the Board? Instead of saying, "The Board will

1 receive" -- I think that's how it started -- you
2 could say, "The Board reserves the right to receive."
3 MR. LAUFFER: That -- that change could be
4 made and then change N-1 in such a way so that it's
5 "The completion of studies or compilation of
6 information by the City of Los Angeles" --
7 MR. NAHAI: Right.
8 MR. LAUFFER: -- "pertaining to the operation
9 of Sunshine Canyon landfill" -- and then, if you
10 want -- "as it relates to this Board's jurisdiction."
11 MR. NAHAI: That's --
12 CHAIR CLOKE: Thank you. I appreciate that.
13 Okay. Now, are we ready to vote?
14 VICE-CHAIR DIAMOND: Yes.
15 CHAIR CLOKE: Okay.
16 On the motion, as clarified, all those
17 in favor, please say, "Aye."
18 MR. NAHAI: Aye.
19 VICE-CHAIR DIAMOND: Aye.
20 MR. PAK: Aye.
21 CHAIR CLOKE: Aye.
22 All those opposed, please say, "No."
23 MR. SHAHEEN: No.
24 MS. BUCKNER-LEVY: No.
25 CHAIR CLOKE: And that motion carries 4 to 2.

1 Thank you, everybody, for your
2 patience on this matter. We will take a 10-minute
3 break. And we will be back in this room at 20
4 minutes after 11:00.

5 (Break: 11:11 - 11:35 A.M.)

6 (Conclusion of Item 11 proceedings.)

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1 STATE OF CALIFORNIA)
) ss.
2 COUNTY OF LOS ANGELES)

4 I, NEALY KENDRICK, CSR No. 11265, do hereby
5 certify:

6 That the foregoing partial transcript of
7 proceedings was taken before me at the time and place
8 therein set forth and thereafter transcribed by
9 computer under my direction and supervision, and I
10 hereby certify that, to the best of my ability, the
11 foregoing partial transcript of proceedings is a
12 full, true, and correct transcript of that portion of
13 the proceedings transcribed.

14 I further certify that I am neither counsel
15 for nor related to any party to said actions nor in
16 anywise interested in the outcomes thereof.

17 IN WITNESS WHEREOF, I have hereunto subscribed
18 my name this 16th day of December, 2003.

20

22

24

NEALY KENDRICK, CSR NO. 11265